IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-IV

IA-1566/2022

IN

CP/IB/1409/(MB)/2020

Under Section 7 of the IBC, 2016

In the matter of

Mr. Anuj Bajpai

Resolution Professional of Corporate Debtor.

…Applicant

V/s.

Prathibha Ramesh Patel

…Respondent

In the matter of

Pegasus Asset Reconstruction Pvt. Ltd.

…Financial Creditor

Versus

Radiance Properties (India) Pvt. Ltd.

…Corporate Debtor

Order delivered on: **23.06.2023**

Coram:

Mr. Prabhat Kumar	Mr. Kishore Vemulapalli
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant in IA-1566/2021: Ms. Nikita, Ld. Counsel.

For the Respondent: Mr. Nausher Kohli a/w Mr. Dikshat Mehra and Mr. Honey Chandani, Ld. Counsel.

ORDER

Per: Prabhat Kumar, Technical (Member)

1. This is an application filed on 08/06/2022 by the Resolution Professional seeking order u/s 43(1) r/w 44(1) and 66 of the Insolvency & Bankruptcy Code, 2016 {"Code"}.

2. The applicant submitted that the Corporate Insolvency Resolution Process was initiated against the Corporate Debtor on 26.11.2021; the Applicant was appointed as IRP in order to carry out the Corporate Insolvency Resolution Process of the Corporate Debtor; after perusing the financials of the Corporate Debtor, during the course of CIRP, the Applicant came across financial ledgers and bank statements of the Corporate Debtor evidencing that between 06.10.2020 and 13.09.2021, the Respondent transferred a total amount aggregating to Rs. 3,19,70,000/- from the bank account of the Corporate Debtor to the Respondent's personal Account.

3. The applicant further submits that, upon identifying the said transfers, the applicant sent multiple communications to the Respondent to refund the said amount of Rs. 3,19,70,000/-. However, till date the Respondent failed to do so.

4. We heard the Ld. Counsel for the RP. No reply filed by the respondents.

5. On perusal of the Ledger account in the name of Respondent in the books of Corporate Debtor as appended to IA, this bench finds that the said sum has been debited to the respondents account. It is further noticed that the Corporate Debtor owed a sum Rs. 13,43,12,367/- to the respondent as on 01.04.2020, out of which a sum of Rs. 3,70,000/- was paid back to the respondent in October 2020; a sum of Rs.23,00,000/- was paid in May 2021; and a sum of Rs.2,93,00,000/- was paid in September 2021. As per the ledger account, it is evident that this payment has been made towards part repayment of the amount payable to the respondents. The Corporate Debtor was admitted to CIRP on 26.11.2021. Accordingly, this payment was made within 2 years of the commencement of CIRP.

6. Section 43 of the Code provides that a Corporate Debtor shall be deemed to have given a preference if there is a transfer of property for the benefit of the creditor on account of antecedent debt owed by the Corporate Debtor and such transfer has the effect of putting the such creditor in beneficial position then it would have been in the event of distribution of assets being made in accordance with section 53 of the Code. It further provides that a payment is made to related party within 2 years preceding the CIRP, the preference shall be deemed to be given. Further, it excludes the transfers made in ordinary course of business of the Corporate Debtor.

7. This bench finds that the repayment of amount, due to the respondent, has been made within 2 years of CIRP commencement; such transfer has the effect of putting the respondents in beneficial position then it would have been in the event of distribution of assets being made in accordance with section 53 of the Code and it is in priority over other creditor; and such transfer is not in the ordinary course of business of the Corporate Debtor, the transaction of transfer of sum of Rs.3,19,70,000/- is a preferential transaction u/s 43 of the Code.

8. Section 44 provides for restitution of such asset to the Corporate Debtor. Accordingly, this bench directs the respondent to pay a sum Rs.3,19,70,000/- to the Corporate Debtor within 15 days.

9. In view of this, the present application **IA-1566/2022 is allowed**.

Sd/-	**Sd/-**
PRABHAT KUMAR	**KISHORE VEMULAPALLI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**
23.06.2023	